

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Kurita	Team: Team # 4	CCRB Case #: 201107577	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/12/2011 10:00 PM	Location of Incident: 170th Street Subway Station of the D train (Grand Concourse and East 170th Street)	Precinct: 44	18 Mo. SOL 12/12/2012	EO SOL 12/12/2012	
Date/Time CV Reported Mon, 06/13/2011 1:25 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 06/13/2011 1:25 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. INS Dermot Shea	00000	899846	44 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Tony Ip	01891	949749	PBBX
2. POF Ivellis Rodriguez	10166	949560	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.INS Dermot Shea	Abuse: Inspector Dermot Shea stopped § 87(2)(b)	
B.INS Dermot Shea	Abuse: Inspector Dermot Shea frisked § 87(2)(b)	

Case Summary

On June 13, 2011, § 87(2)(b) called the CCRB Call Processing System to file his complaint. § 87(2)(b) reported that on June 12, 2011, at approximately 10:00 p.m., he was stopped by Inspector Dermot Shea, of the 44th Precinct at the 170th Street subway station of the D train in the Bronx. The following allegations resulted from his complaint:

Allegation A- Abuse of Authority: Inspector Dermot Shea stopped § 87(2)(b) § 87(2)(g)

Allegation B- Abuse of Authority: Inspector Dermot Shea frisked § 87(2)(b) § 87(2)(g)

§ 87(2)(b) rejected mediation § 87(2)(b)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male who is 5'10" tall and 170 lbs. with black hair and brown eyes. § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided his initial statement to the CCRB Call Processing System. § 87(2)(g)

§ 87(2)(b) was interviewed at the CCRB on June 29, 2011 (encl. 28-34). On June 12, 2011, at approximately 10:00 p.m. § 87(2)(b) walked on Myrtle Avenue toward East 170th Street and entered the 170th Street subway station of the D train at East 170th Street and Myrtle Avenue. § 87(2)(b) did not observe any criminal activity while he walked to the subway station. § 87(2)(b) wore baggy beige cargo pants, a baggy red t-shirt, and a black baseball cap. § 87(2)(b) had a cell phone and house keys in his front right pocket, a wallet in his right rear pocket. § 87(2)(b) had no items strapped to his waist and no items that would have created a bulge on his body. He carried a black nylon gym bag that contained a self-help book, a Bible, paperwork, and a t-shirt. § 87(2)(b) entered the subway station, paid for his fare to a station agent and waited on the Manhattan-bound platform. § 87(2)(b) walked to the middle of the platform, equidistant between two entrances at either end of the platform and waited for a train. He glanced around himself in order to be aware of his surroundings. At the opposite entrance from where he entered the platform, § 87(2)(b) observed three uniformed officers, one of whom later provided his name to § 87(2)(b) as Inspector Dermot Shea of the 44th Precinct, and two officers identified by the investigation as PO Tony Ip and PO Ivelis Rodriguez, both of the 44th Precinct, walking toward him. § 87(2)(b) described Inspector Shea as a white male in uniform, who wore a white shirt with a gold shield who was approximately 6'1" tall with a slender build, who was approximately early 50's in age with short, salt-and-pepper-colored hair, and dark-colored eyes. § 87(2)(b) described PO Ip as an Asian male who wore a blue uniform who was approximately 6'1" tall with a stocky build, who was approximately late 20's or early

30's in age with short hair. § 87(2)(b) described PO Rodriguez as a Hispanic female who wore a blue uniform, who was approximately 5'7" tall with an average build, who was approximately 20's in age with curly brown hair and light colored eyes. § 87(2)(b) was not sure if the officers were on the platform when he arrived or if they arrived after him. § 87(2)(b) was not aware if they were following him or had followed him from any location outside of the subway station.

§ 87(2)(b) observed Inspector Shea, PO Ip, and PO Rodriguez, and looked away. § 87(2)(b) then looked back at the officers because they appeared to be walking directly toward him. Inspector Shea approached § 87(2)(b) and asked where he was coming from and if he had been in the vicinity of East 170th Street. § 87(2)(b) told Inspector Shea that he was at a friend's home on Myrtle Avenue. Inspector Shea asked § 87(2)(b) where he was going and § 87(2)(b) asked Inspector Shea why he was asking and why it was relevant. Inspector Shea raised his hands and instructed § 87(2)(b) to remain calm. § 87(2)(b) thought it was odd that Inspector Shea instructed him to be calm when he was already calm. § 87(2)(b) asked Inspector Shea why he was being stopped at least five times. Inspector Shea told § 87(2)(b) "Let me see your bag," and removed § 87(2)(b)'s bag from his shoulder and handed the bag to PO Ip. PO Ip held the bag but did not search it. Inspector Shea frisked § 87(2)(b)'s lower torso, waist, thighs, and crotch and while he did this he asked § 87(2)(b) "Do you have any weapons on you?" § 87(2)(b) told him that he did not have any weapons and repeatedly asked why he was being stopped and questioned. After Inspector Shea frisked § 87(2)(b) he informed him that he was conducting an investigation. Inspector Shea informed § 87(2)(b) that there was an incident at a store on East 170th Street and that he matched a description.

§ 87(2)(b) volunteered to accompany Inspector Shea, PO Ip, and PO Rodriguez to the store to prove that he had nothing to do with any criminal activity. Inspector Shea agreed and PO Ip and PO Rodriguez walked with § 87(2)(b) to El Rudy Deli located approximately one half block away on Grand Concourse between East 170th Street and Wythe Place. Inspector Shea drove an unmarked black car to El Rudy Deli. § 87(2)(b) is familiar with the store as he is a frequent customer. He was not aware of any crimes committed at the store and stated that it was a coincidence that officers suspected him of a crime committed at a store that he is familiar with. The manager of the store, § 87(2)(b) immediately stated that he knew § 87(2)(b) that § 87(2)(b) was a regular customer, and that § 87(2)(b) had nothing to do with the crime committed at his store. § 87(2)(b) was released.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old Hispanic male who is 5'7" tall and 200 lbs. with black hair and brown eyes. § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on July 22, 2011 (encl. 35-37). § 87(2)(b) is acquainted with § 87(2)(b) as § 87(2)(b) is a regular customer at El Rudy Deli. On June 12, 2011, at approximately 10:00 PM, § 87(2)(b) was working at El Rudy Deli. Two individuals entered the store, one whom § 87(2)(b) described as a black male, approximately 5'9" tall with a thin build and approximately mid to late twenties in age, wearing a red basketball jersey, the other was a Hispanic male, approximately 5'7" tall with a thin build, approximately early twenties in age, wearing a grey t-shirt.

The black male individual began cursing at and arguing with § 87(2)(b) who told the black male to leave his store. The Hispanic male pulled the black male out of the store and prevented him from re-entering the store to fight § 87(2)(b). The black male individual began kicking the delivery bicycles that were parked in front of the store. § 87(2)(b) picked up a telephone and

told the black male individual that he would call the police.

From the direction of Whyte Place, an unmarked, dark-colored sedan arrived at the store with lights flashing. § 87(2)(b) did not call the police and thought that the arrival of the police car was coincidental. The unidentified black male and Hispanic male individuals fled on foot toward Grand Concourse. The unmarked car was occupied by an officer identified by the investigation as Inspector Shea. A customer explained the incident involving the black male to Inspector Shea, who entered his car and drove away.

After several minutes, Inspector Shea returned and summoned § 87(2)(b) outside of the store where he stood with § 87(2)(b). Inspector Shea asked § 87(2)(b) if § 87(2)(b) was the individual who kicked at the bicycles in front of the store. § 87(2)(b) informed Inspector Shea that § 87(2)(b) was not the individual who kicked at the bicycles, that he knew § 87(2)(b) and that § 87(2)(b) was a customer of the store. § 87(2)(b) was angry about being stopped by Inspector Shea and told him he would call the news and sue the city. § 87(2)(b) requested Inspector Shea's name. Inspector Shea told § 87(2)(b) he was sorry and informed § 87(2)(b) of his name several times. Inspector Shea never raised his voice during the incident. Inspector Shea drove away in the unmarked car.

NYPD Statements:

Subject Officer: INSPECTOR DERMOT SHEA

- *Inspector Dermot Shea is a § 87(2)(b)-old white male who is 6'3" tall and 190 lbs. with green eyes and brown hair.*
- *On June 12, 2011, Inspector Shea was the Commanding Officer of the 44th Precinct. Inspector Shea did not have a partner at the time of the incident and he was assigned to an unmarked black Impala. Inspector Shea was in uniform. He could not recall his exact tour, but stated that he was working at the time of the incident.*

CCRB Testimony

Inspector Shea was interviewed at the CCRB on October 14, 2011 (encl. 38-41). On June 12, 2011, at approximately 10:00 p.m., Inspector Shea drove westbound on East 170th Street approaching Grand Concourse. At the corner of East 170th Street and Grand Concourse, Inspector Shea observed a black male individual involved in a heated argument with individuals outside of a convenience store. Inspector Shea was concerned that the incident could escalate into a dangerous condition. Inspector Shea could not recall any additional description of the individual. Inspector Shea did not observe any weapons used by the male individual. The unidentified black male was yelling and cursing at an unidentified male of Middle Eastern descent who Inspector Shea identified as an employee of the store. The unidentified black male picked up a large unidentified object and threw it toward the store. Inspector Shea could not recall if the large object hit anything or any individuals or caused any damage to the store. Inspector Shea was on the opposite side of East 170th Street when he observed the black male individual throw the object. Inspector Shea was blocked by traffic and could not make a U-turn or drive across the street. The black male individual walked eastbound on East 170th Street and Inspector Shea lost sight of the black male individual because he was caught in traffic. Approximately one to two minutes passed while Inspector Shea extricated himself from traffic and the unidentified black male individual was out of sight. Inspector Shea conducted a canvass in the vicinity of East 170th Street and Grand Concourse in order to find the individual. On the eastbound side of East 170th Street and Grand Concourse, Inspector Shea observed PO Ip and PO Rodriguez at Impact Posts. Inspector Shea inquired of PO Ip and PO Rodriguez if they observed any black male individuals who appeared to be fleeing in the vicinity and PO Ip and PO

Rodriguez had not. PO Ip, PO Rodriguez, and Inspector Shea drove in the vicinity of East 170th Street and Grand Concourse, searching for the unidentified black male individual.

Inspector Shea conducted a vertical patrol inside the 170th Street subway station of the D train, approximately one half block away from the convenience store, because he observed the unidentified black male walk away from the store in the direction of the subway station. Inspector Shea, PO Ip, and PO Rodriguez walked on the southbound platform and observed an individual identified as § 87(2)(b) walking toward them. § 87(2)(b) carried a bag. § 87(2)(b) did not appear to flee at the sight of Inspector Shea, PO Ip, and PO Rodriguez. At the time of his statement to the CCRB, Inspector Shea recalled that § 87(2)(b) matched the description of the unidentified black male individual but he could not recall any specific description of either individual. § 87(2)(b) was in close proximity to the time and location of the crime Inspector Shea observed. Inspector Shea did not observe any additional individuals who matched the description of the unidentified black male individual and Inspector Shea was close enough behind the black male individual to observe him walking away from the location at street level. Inspector Shea, PO Ip, and PO Rodriguez approached § 87(2)(b). Inspector Shea could not recall what he said to or asked § 87(2)(b). Inspector Shea testified that § 87(2)(b) became angry immediately upon approach and gestured with his arms, which made Inspector Shea uncomfortable. Inspector Shea explained to § 87(2)(b) that he was investigating a crime and that he matched the description of an individual who had committed a crime nearby minutes earlier. Inspector Shea could not recall any of the words that § 87(2)(b) used, except that he was screaming, and accused Inspector Shea of lying about his matching a description of any individual. Because § 87(2)(b) matched the description of a suspect in a violent crime, either Inspector Shea, PO Ip, PO Rodriguez frisked him. Inspector Shea could not recall whether he, PO Ip, or PO Rodriguez frisked § 87(2)(b). § 87(2)(b) invited officers to search him and his bag. An officer searched § 87(2)(b) and his bag. Inspector Shea could not recall who searched § 87(2)(b)'s bag. § 87(2)(b) was angry and demanded to speak to the individual who reported the crime. Inspector Shea told § 87(2)(b) that he could go to the store and speak to the store owner. § 87(2)(b) demanded that Inspector Shea accompany him to the store so that he could prove that he was not the perpetrator of any crime at any store. Inspector Shea agreed and he, PO Ip, PO Rodriguez, and § 87(2)(b) went to the store where the unidentified black male individual threw the large object. Inspector Shea spoke to § 87(2)(b) who thanked Inspector Shea for investigating the incident and who recognized § 87(2)(b) and informed Inspector Shea that § 87(2)(b) was not the perpetrator. Inspector Shea told § 87(2)(b) that the deli owner's statement proved that there was an incident and that he had a legitimate reason for stopping him. § 87(2)(b) calmed down. Inspector Shea instructed PO Ip and PO Rodriguez to generate a UF250 (stop and frisk report) with regard to the incident. § 87(2)(b) returned to the subway station and Inspector Shea, PO Ip, and PO Rodriguez resumed patrol.

Witness Officer: PO TONY IP

- *PO Tony Ip is a § 87(2)(b)-old Asian male who is 5'11" tall and 165 lbs. with black hair and brown eyes.*
- *On June 12, 2011, PO Ip was working Impact Post 20 and 21 in the confines of the 44th Precinct. PO Ip was in uniform, on foot, and worked a tour from 2:00 p.m. to 10:35 p.m. PO Ip did not have a partner.*

Memo Book

At 10:05 p.m. PO Ip stopped § 87(2)(b) of § 87(2)(b) DOB § 87(2)(b), a § 87(2)(b) old black male, 6'1" tall. § 87(2)(b) was stopped inside E. 170th Street train station of the B/D line because he was suspected of robbery. PO Ip

generated a Stop, Question, and Frisk report regarding the incident.

UF250

On June 12, 2011, at 10:05 p.m., § 87(2)(b) was stopped inside the subway station at East 170th Street and Grand Concourse in the Bronx. § 87(2)(b) was stopped because he matched the description of an individual suspected of robbery. The description was reported by a victim, witness, or officer. § 87(2)(b) was frisked because he was suspected of a violent crime. § 87(2)(b) was annoyed by the stop. § 87(2)(b) was observed for one minute and the stop lasted five minutes. § 87(2)(b) was not searched, issued a summons, or arrested (encl. 46A).

CCRB Testimony

PO Ip was interviewed at the CCRB On October 14, 2011 (encl. 42-46). § 87(2)(g)

On June 12, 2011, at approximately 10:00 p.m., PO Ip was at his impact post when Inspector Shea picked him up and they conducted a vertical patrol inside the 170th Street subway station of the D train. PO Ip generated a UF-250 regarding the stop and frisk of § 87(2)(b). PO Ip recognized § 87(2)(b) in a photograph as the individual for whom he generated a UF-250. Inspector Shea frisked § 87(2)(b) as the complaint involved a violent crime. PO Ip did not search § 87(2)(b)'s person and did not know whether any officer searched § 87(2)(b)'s person. No officer searched § 87(2)(b)'s bag. PO Ip frisked § 87(2)(b)'s bag but he did not look inside the bag.

Witness Officer: PO IVELIS RODRIGUEZ

- *PO Ivelis Rodriguez is a § 87(2)(b)-old Hispanic female, 5'0" tall and 108 lbs. with brown hair and green eyes.*
- *On June 12, 2011, PO Rodriguez was working Impact Post 2 in the confines of the 44th Precinct. She was in uniform, on foot, and worked a tour from 2:00 p.m. to 10:35 p.m.*

Memo Book

At 10:05 p.m. PO Rodriguez made a note on the fly page of her memo book regarding the stop of one male for possible robbery at a store at 134 East 170th Street. A UF-250 (stop and frisk report) was generated by PO Ip. PO Rodriguez and PO Ip were picked up by Inspector Shea.

CCRB Testimony

PO Rodriguez was interviewed at the CCRB on October 28, 2011 (encl. 47-51). On June 12, 2011 at approximately 10:00 p.m., Inspector Shea picked up PO Rodriguez and PO Ip at their post in the vicinity of East 170th Street and Grand Concourse. Inspector Shea explained to PO Rodriguez that an individual complained of a robbery at a nearby store. PO Rodriguez could not recall any of the details provided to her by Inspector Shea regarding the robbery. PO Rodriguez could not recall whether the alleged robbery involved any violence. Inspector Shea, PO Rodriguez, and PO Ip drove around the block searching for the individual and eventually conducted a vertical patrol inside the 170th Street subway station of the D train. Toward the end of the platform, PO Rodriguez observed § 87(2)(b) standing by himself. § 87(2)(b) matched the description provided to PO Rodriguez by Inspector Shea. PO Rodriguez could not recall if § 87(2)(b) carried a bag. PO Rodriguez, Inspector Shea and PO Ip approached § 87(2)(b). § 87(2)(b) Inspector Shea instructed PO Ip to frisk § 87(2)(b) and PO Ip frisked § 87(2)(b). PO Rodriguez did not observe any officer search of § 87(2)(b). PO Rodriguez could not recall any frisk or search of a bag in § 87(2)(b)'s possession. PO Rodriguez had no direct interaction

with § 87(2)(b)

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of February 3, 2012 with regard to the incident (encl. 64).

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 24).

Subject Officer CCRB History

- Inspector Dermot Shea has been a member of the service for 20 years and there are three substantiated CCRB allegations against him:
 - On January 26, 2005, Panel 12C-2004 substantiated allegations of Frisk, Vehicle Stop, and Vehicle Search with regard to CCRB case number 200306684. Inspector Shea received instructions (encl. 23).

Conclusion

Identification of Subject Officer

- § 87(2)(b) provided Inspector Shea's name to the CCRB during his initial complaint and described him as a 40-year-old white male who was approximately 6'2" tall with a slender build and who wore a white shirt. Inspector Shea's service photo indicated that he is a § 87(2)(b)-old white male who is 6'3" tall and 190 lbs. In addition, Inspector Shea acknowledged that he interacted with an individual identified as § 87(2)(b) at the time and location of the incident.

Investigative Findings and Recommendations

Allegation A- Abuse of Authority: Inspector Dermot Shea stopped § 87(2)(b)

Allegation B- Abuse of Authority: Inspector Dermot Shea frisked § 87(2)(b)

Inspector Shea testified that he observed a black male individual, whose specific description he could not recall, fight with § 87(2)(b) and throw a large object in the vicinity of East 170th Street and Grand Concourse in the Bronx. § 87(2)(b) testified that he had a fight with a black male who was approximately 5'9" tall with a thin build and wearing a red shirt outside of El Rudy Deli, located at East 170th Street and Grand Concourse and that the individual kicked at the bicycles in front of the store. § 87(2)(b) a 5'10" tall black male with a thin build, testified that, at the time of the incident, he wore a red shirt and was at the D subway station located at East 170th Street and Grand Concourse. Inspector Shea pursued the individual, enlisted the help of PO Ip and PO Rodriguez, and conducted a canvass inside the D subway station at East 170th Street and Grand Concourse where he observed § 87(2)(b) who matched the description of the suspect. Inspector Shea stopped § 87(2)(b) questioned him, and frisked him because he observed an individual who matched his description commit a violent crime in close proximity to

the time and place where he encountered § 87(2)(b) Neither observed the fight, but indicated that the person they stopped matched inspector Shea's description of the perpetrator. Inspector Shea testified that § 87(2)(b) became angry as soon as he was approached. § 87(2)(b) testified that he did not become angry, but that Inspector Shea instructed him to calm down. The Stop, Question, and Frisk report indicated that § 87(2)(b) was stopped and frisked because he fit the description of a suspect in a robbery, which is considered to be a violent crime. The time of the stop indicated in the Stop, Question, and Frisk Report was within five minutes of the time § 87(2)(b) reported that he was at the 170th Street subway station of the D train.

People v. Debour held that an officer may stop an individual when an officer "entertains a reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or misdemeanor." People v. DeBour 40 N.Y.2d 210; 352 N.E.2d562; 386 N.Y.S.2d 375; 1976, p. 7 (encl. 1-13). People v. Mack held that an officer's "frisk of a defendant is justified, pursuant to N.Y.S. Criminal Procedure Law Section 180-a because he reasonably suspects that the defendant committed, was committing, or was about to commit a serious or violent crime." People v. Mack 26 N.Y.2d311; 258 N.E.2d 703; 310 N.Y.S.2d 292; 1970 (encl. 14-22).

§ 87(2)(g)

§ 87(2)(g)

Team: **4**

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Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date